

Claimant alleges he sustained a back injury while lifting a manhole cover weighing more than one hundred (100) pounds on or about August 4, 1994. His attorney concedes claimant did not provide notice of the accident until September 7, 1994, when his attorney wrote respondent to claim benefits.

Prior to this injury, claimant had previously experienced temporary back pain on several occasions which had resolved without complications. Therefore, claimant did not think much of it when he strained his back lifting the manhole cover. At the time of the incident, claimant's symptoms were not debilitating. Because of unrelated health concerns at the time of the accident claimant had obtained an appointment to see his personal physician several days later. When claimant attended that appointment, he mentioned he had back pain and the physician advised him it might be due to the diarrhea he was then experiencing. When claimant returned to his personal physician for a follow-up appointment the next week on August 18, claimant's back condition had progressively worsened and he could hardly walk. Claimant then underwent a CT scan and MRI which indicated herniated discs in the lumbar spine. At that point claimant sought legal assistance.

The Appeals Board finds claimant injured his back on or about August 4, 1994, as alleged. The Appeals Board also finds claimant had just cause in failing to report the accident within ten (10) days as required by K.S.A. 44-520, and, therefore, notice on September 7, 1994, was timely.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on March 14, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 1995.

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BOARD MEMBER

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**DISSENT**

I respectfully dissent from the Award of the majority in the above matter. K.S.A. 44-520 requires that a claimant provide notice to the respondent regarding an accident stating "the time and place and particulars thereof, and the name and address of the person injured," within ten days after the date of the accident. It goes on to state that the ten day notice provided shall not be a bar to proceeding for compensation under the Workers Compensation Act if the claimant shows that a failure to notify under this section was due to "just cause".

In this instance, claimant failed to mention the injury on the date of the accident. Claimant was dismissed from his employment on August 16, eleven or twelve days after the date of accident, and at the time of dismissal made no mention of any workplace injury. Claimant sought treatment from Dr. Burney within five or six days of the alleged date of accident, but failed to mention any injury to Dr. Burney.

Claimant had been through the workers compensation process on two prior occasions and was aware that notice to the employer was required. He failed to notify the respondent of the alleged injury until legal representation was obtained.

It is claimant's burden to prove entitlement to benefits under the Workers Compensation Act by proving the various conditions on which the claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501(a) and K.S.A. 44-508(g).

The contradictions in claimant's allegations coupled with the testimony of co-workers denying that claimant suffered the injury or even lifted a manhole cover on the date of the alleged injury convinces the undersigned that claimant has failed in his burden of proving that he had just cause for failing to notify the respondent within ten days of the alleged date of injury. I would deny claimant benefits in this instance.

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BOARD MEMBER

c: Paul D. Hogan, Wichita, Kansas  
Vincent A. Burnett, Wichita, Kansas  
John D. Clark, Administrative Law Judge  
George Gomez, Director